

**IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON**

**STATE OF WASHINGTON,**

**No. 27055-6-III**

**Respondent,**

**Division Three**

**v.**

**MELISSA C. WINTERS,**

**UNPUBLISHED OPINION**

**Appellant.**

Sweeney, J. – The defendant here contends that the finding she manufactured marijuana within 1,000 feet of a school bus stop is not supported by sufficient evidence. The school bus route stop must be designated by a school district. RCW 69.50.435(1)(c). And school districts may delegate the authority to designate school bus stops to an agent. *State v. Sanchez*, 104 Wn. App. 976, 979, 17 P.3d 1275 (2001). Here, a company that contracts with the school district to designate and track school bus stops for Spokane’s public schools located the bus stops. The company has designated three bus stops within 1,000 feet of the defendant’s home. She manufactured marijuana in that house. This evidence supports the finding that a school district designated the readily ascertainable

bus stops at issue here. We, therefore, affirm the sentence enhancement.

### FACTS

Melissa Winters rented the house at 1202 East Indiana Avenue in Spokane, Washington, from approximately June 2004 to September 2006. Police discovered a marijuana grow in her home during a lawful search in 2006. The State then charged Ms. Winters with several crimes, including manufacturing a controlled substance. The information alleged the manufacturing occurred within 1,000 feet of a school bus route stop.

At trial, John Pike, a bus operations supervisor, testified that he works for First Student, a company that contracts with School District No. 81. He explained that First Student “determine[s], when a new stop is created, whether it’s safe to put a stop in a particular location or to find a safe spot for a school bus stop.” Report of Proceedings (RP) at 41-42. First Student inputs School District No. 81’s bus stops into a computerized tracking system and uses the system to “look up stops on the map and place stops on the map.” RP at 43.

Gary Kuntz, a crime analyst for the Spokane Police Department, created a map that highlighted a 1,000 foot radius around Ms. Winters’s home. And Mr. Pike used that map to locate three school bus route stops within 1,000 feet of Ms. Winters’ home. The

three stops were located at East Baldwin and Columbus, East Thor and Columbus, and East Thor and North Morton. The first two stops served Shaw Middle School, and the last stop served Lewis and Clark High School.

A jury found Ms. Winters guilty of manufacturing a controlled substance. It also found, by special verdict, that Ms. Winters manufactured the controlled substance within 1,000 feet of a school bus route stop. The special verdict resulted in a 24-month sentence enhancement.

Ms. Winters appeals the enhancement.

#### DISCUSSION

Ms. Winters contends that the State failed to prove that a school district designated the school bus route stops located within a 1,000 foot radius of her home.

The question is whether substantial evidence supports the elements necessary for the enhancement when that evidence is viewed in a light most favorable to the State.

*State v. O'Neal*, 126 Wn. App. 395, 412, 109 P.3d 429 (2005), *aff'd*, 159 Wn.2d 500, 150 P.3d 1121 (2007). A defendant who claims insufficient evidence admits the truth of the State's evidence and all inferences that can reasonably be drawn from it. *State v. Salinas*, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992).

A person who manufactures a controlled substance within 1,000 feet of a school

bus route stop is subject to an additional 24 months' incarceration. RCW 9.94A.533(6); RCW 69.50.435(1)(c); *State v. Coria*, 120 Wn.2d 156, 162, 839 P.2d 890 (1992) (citing the statutory predecessor to RCW 9.94A.533(6)). A "school bus route stop" is "a school bus stop as designated by a school district." RCW 69.50.435(6)(c).

A school district's agent, such as its transportation supervisor, may designate school bus stops for a school district. *Sanchez*, 104 Wn. App. at 979. But Ms. Winters argues that, here, the State produced no evidence that First Student or Mr. Pike are agents charged with designating school bus stops for a school district.

Mr. Pike's employer, First Student, contracts with School District No. 81 to locate, determine, and track its school bus stops. This is an agency relationship. *See Stansfield v. Douglas County*, 107 Wn. App. 1, 17-18, 27 P.3d 205 (2001). We, therefore, conclude that this evidence is sufficient to support a finding that the school bus stops near Ms. Winters's home had been *designated by a school district*. RCW 69.50.435(6)(c).

Ms. Winters also contends that the State produced no evidence that a school district employee would have been able to identify the stops as school bus route stops.

School bus stops are readily identifiable by "observing the gathering of schoolchildren waiting for their school buses, or contacting local schools or the director of transportation for the school district." *Davis*, 93 Wn. App. at 653 (quoting *Coria*, 120

Wn.2d at 167). In *Coria*, the court determined that the bus stops at issue there were identifiable because, according to the transportation director, a person could learn the location of a school bus stop by calling his office. 120 Wn.2d at 160, 167. And in *State v. Johnson*, the court held that the bus stops there were identifiable because they existed on the date of the alleged crime and because logical inferences from the transportation manager's testimony suggested that a person could call his office for information about bus stop locations. 116 Wn. App. 851, 863, 68 P.3d 290 (2003).

Here, Mr. Pike testified that three active school bus stops serving School District No. 81 schools existed within 1,000 feet of Ms. Winters' home when she manufactured marijuana. He also testified that he looks up the school district's bus stops in a computerized tracking system. We infer from this, and we conclude that a reasonable jury could infer from this, that Ms. Winters could have called Mr. Pike's office to locate those stops near her home. *Id.* The State, therefore, showed that the bus stops at issue here were readily identifiable. *Coria*, 120 Wn.2d at 167; *Johnson*, 116 Wn. App. at 863.

We affirm the 24-month sentence enhancement.

Finally, in a statement of additional grounds, Ms. Winters contends that she received ineffective assistance of counsel when her public defender failed to call any defense witnesses to testify during trial. Whether to call a witness is a matter of

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legitimate trial tactics and does not support a claim of ineffective assistance. *State v. Maurice*, 79 Wn. App. 544, 552, 903 P.2d 514 (1995).

Affirmed.

A majority of the panel has determined that this opinion will not be printed in the Washington Appellate Reports but it will be filed for public record pursuant to RCW 2.06.040.

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Sweeney, J.

WE CONCUR:

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Schultheis, C.J.

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Kulik, J.